

FEDERAL EMPLOYEE TAX ACCOUNTABILITY ACT OF 2013

APRIL 12, 2013.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. ISSA, from the Committee on Oversight and Government Reform, submitted the following

REPORT

together with

MINORITY VIEWS

[To accompany H.R. 249]

[Including cost estimate of the Congressional Budget Office]

The Committee on Oversight and Government Reform, to whom was referred the bill (H.R. 249) to amend title 5, United States Code, to provide that persons having seriously delinquent tax debts shall be ineligible for Federal employment, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

CONTENTS

| | Page |
|--|------|
| Committee Statement and Views | 2 |
| Section-by-Section | 4 |
| Explanation of Amendments | 4 |
| Committee Consideration | 5 |
| Application of Law to the Legislative Branch | 6 |
| Statement of Oversight Findings and Recommendations of the Committee | 6 |
| Statement of General Performance Goals and Objectives | 6 |
| Disclosure of Directed Rule Makings | 6 |
| Federal Advisory Committee Act | 6 |
| Unfunded Mandate Statement | 6 |
| Earmark Identification | 7 |
| Duplication of Federal Programs | 7 |
| Committee Estimate | 7 |
| Budget Authority and Congressional Budget Office Cost Estimate | 7 |
| Changes in Existing Law Made by the Bill as Reported | 8 |
| Minority Views | 12 |

COMMITTEE STATEMENT AND VIEWS

PURPOSE AND SUMMARY

Most taxpayers file accurate tax returns and pay the taxes they owe on time, regardless of their income. Federal employees and individuals applying for federal employment should do the same. In 2011, the most recent year for which Internal Revenue Service (IRS) data is available, 107,658 civilian federal employees owed more than \$1 billion in taxes. The average delinquency rate for federal civilian employees was 3.62 percent, up from 3.33 percent in 2010.¹

Employees who consciously ignore the channels and processes in place to fulfill their tax obligations must be held accountable. The Federal Employee Tax Accountability Act of 2013 addresses this area of non-compliance with our tax laws by prohibiting individuals with seriously delinquent tax debt from federal civilian employment. The intent of the bill is simple: If you are a federal worker or applicant, you should be making a good faith effort to pay your taxes or dispute them, as all taxpayers have the right to do. Holding federal employees who fail to meet their taxpayer obligations accountable will foster public confidence in the federal workforce.

BACKGROUND AND NEED FOR LEGISLATION

Federal employees are called to account for paying taxes by the Code of Ethics for the Executive Branch.² The Code of Ethics dictates that federal employees must “satisfy in good faith their obligations as citizens, including all just financial obligations, especially those such as federal, state, or local taxes that are imposed by law.”

The IRS urges individuals to resolve their taxpayer obligations. Taxpayers who fail to pay all they owe receive a Notice of Tax Due and Demand for Payment, a bill including the tax owed plus interest and penalties. If the taxpayer does not respond to the first notice or subsequent notices sent by the IRS, their account balance becomes delinquent.

Delinquent accounts may be turned over for collection, during which time an attempt will be made to reach agreement on a payment plan. Taxpayers who cannot pay their taxes on time have a number of options, including: (1) extension of time to pay; (2) installment agreement; (3) delayed collection; and (4) offer in compromise. Taxpayers who fail to cooperate with payment options may be subject to enforced collection action. The IRS affords individuals several avenues for reconsideration, including the right to appeal the collection action.

During the collection process, the IRS may file a Notice of Federal Tax Lien to secure the government’s interest. Once a lien has been filed, the IRS cannot issue a Certificate of Release of Federal Tax Lien until the taxes, penalties, interest, and associated recording fees are paid in full.

In 1992, the IRS established the Federal Employee/Retiree Delinquency Initiative (FERDI) to promote federal tax compliance

¹ Internal Revenue Service, Federal Employee/Retiree Delinquency Initiative (FERDI) Civilian/Military/Retiree Summary Report, September 30, 2011.

² 5 CFR 2635.809.

among current and retired federal employees. Under FERDI, the IRS annually identifies federal employees who are tax delinquent for appropriate follow-up action. In addition, the IRS contacts agency Chief Human Capital Officers with general data on delinquency rates on civilian workers. The IRS also provides information to support employee communication on tax compliance.³

To help the IRS collect delinquent taxes more effectively, Congress included a provision in the Taxpayer Relief Act of 1997⁴ authorizing the establishment of the Federal Payment Levy Program (FPLP), which allows the IRS to continuously levy up to 15 percent of certain federal payments made to delinquent taxpayers. Federal payments that can be levied through the FPLP include federal salaries, federal annuities, and federal employee advances or reimbursements.

In March 2011, the Chief Human Capital Officers Council met to develop strategies to reduce the number of federal employees with delinquent tax liabilities. Agency heads discussed the federal employee delinquency rate in communications related to tax filing deadlines. For example, Office of Personnel Management Director John Berry sent an email reminding OPM employees of their responsibility to pay their taxes.⁵

Despite these efforts, the percentage of federal employees with delinquent tax liabilities has increased. At the end of 2011, the most recent year for which IRS data is available, 107,658 federal civilian workers owed \$1,012,998,984 in taxes. The 2011 data represents a ten percent increase in the number of tax delinquent federal civilian employees. The average delinquency rate for federal civilian employees was 3.62 percent, an increase from 2010.⁶

The Committee agrees with the General Accountability Office that “voluntary compliance with tax law, the foundation of the U.S. tax system, could be undermined if the public perceives that federal workers and former federal workers successfully evade their tax obligations.”⁷

LEGISLATIVE HISTORY

On March 3, 2010, Representative Chaffetz (R-UT) introduced H.R. 4735, a bill to amend title 5, United States Code, to provide that persons having seriously delinquent tax debts shall be ineligible for federal employment. The Subcommittee on Federal Workforce, Postal Service, and the District of Columbia held a hearing to consider the legislation on March 17, 2010.

H.R. 4735 was reintroduced in the 112th Congress on February 28, 2011, as H.R. 828. On April 13, 2011, the Committee ordered reported favorably H.R. 828, as amended, by voice vote. On July 31, 2012, H.R. 828 was passed by the House under suspension of the rules by a vote of 263–114 (Roll no. 538). The bill was referred

³ Statement of Beth Tucker, Deputy Commissioner, Wage and Investment Division, Internal Revenue Service, for hearing entitled, “H.R. 4735, a bill to amend title 5, United States Code, to provide that persons having seriously delinquent tax debts shall be ineligible for federal employment,” U.S. House Subcommittee on Federal Workforce, Postal Service and the District of Columbia, March 17, 2010, at pp 15–18.

⁴ 26 USC 6331(h).

⁵ Email from John Berry, Director, U.S. Office of Personnel Management, April 15, 2011.

⁶ Internal Revenue Service, Federal Employee/Retiree Delinquency Initiative (FERDI) Civilian/Military/Retiree Summary Report, September 30, 2011.

⁷ U.S. General Accountability Office, Internal Revenue Service: Unpaid Taxes of Federal Workers and Annuitants, GAO-01-195 (Washington, D.C.: June 2001).

to the Senate Committee on Homeland Security and Governmental Affairs. No further action was taken during the 112th Congress.

At the start of the 113th Congress, H.R. 828 was reintroduced as H.R. 249.

SECTION-BY-SECTION

Section 1. Short title

Establishes the short title of the bill as “Federal Employee Tax Accountability Act of 2013.”

Section 2. Ineligibility of persons having seriously delinquent tax debts for federal employment

Individuals having seriously delinquent tax debts are ineligible for federal employment in the executive and legislative branch. “Seriously tax delinquent” is defined as an outstanding federal tax debt for which a notice of lien has been publicly filed. The bill exempts employees who are working to settle tax liabilities by excluding federal tax debts being paid in accordance with an installment agreement, offer of compromise, or wage garnishment; for which a due process hearing or request for relief from joint and several liability is requested or pending; or for which relief has been granted.

The bill prescribes a scheme for conducting the tax reviews necessary to identify individuals who are seriously tax delinquent that is based on the July 29, 1977, Treasury Department Order granting the Internal Revenue Service (IRS) Commissioner authority to undertake tax checks. First, agencies identify individuals ineligible for employment by requiring applicants to certify they are not seriously tax delinquent. Second, agencies periodically conduct reviews of public records for liens. If a lien is discovered, the individual submits a form to the agency authorizing the Secretary of the Treasury to disclose to the agency head information on whether the individual has a seriously delinquent tax debt. Tax information disclosed to the agency head is confidential.

The Office of Personnel Management (OPM), in consultation with the IRS, establishes regulations to implement the bill. Individuals must be provided full due process rights and allowed 180 days to demonstrate their debt meets one of the exemptions (e.g., an individual has entered into an installment agreement). The bill provides a financial hardship exemption if the individual’s service is in the best interests of the United States, and requires OPM to report annually to Congress on the number of financial hardship exemptions granted.

Section 3. Effective date

The bill takes effect 9 months after the date of enactment.

EXPLANATION OF AMENDMENTS

No amendments were adopted to H.R. 249.

COMMITTEE CONSIDERATION

On March 20, 2013, the Committee met in open session and ordered reported favorably the bill, H.R. 249, by voice vote, a quorum being present.

CORRESPONDENCE

APRIL 10, 2013.

Hon. CANDICE MILLER,
*Chairman, Committee on House Administration,
 House of Representatives, Washington, DC.*

DEAR MRS. CHAIRMAN: Thank you for your letter regarding the Committee on House Administration's jurisdictional interest in H.R. 249, the "Federal Employee Tax Accountability Act of 2013," and your willingness to forego consideration of H.R. 249 by your committee.

I agree that the Committee on House Administration has a valid jurisdictional interest in certain provisions of H.R. 249 and that the Committee's jurisdiction will not be adversely affected by your decision to forego consideration of H.R. 249. As you have requested, I will support your request for an appropriate appointment of outside conferees from your Committee in the event of a House-Senate conference on this or similar legislation should such a conference be convened.

Finally, I will include a copy of your letter and this response in the Committee Report and in the *Congressional Record* during the floor consideration of this bill. Thank you again for your cooperation.

Sincerely,

DARRELL ISSA,
Chairman.

HOUSE OF REPRESENTATIVES,
 COMMITTEE ON HOUSE ADMINISTRATION,
 Washington, DC, April 11, 2013.

Hon. DARRELL ISSA,
*Chairman, Committee on Oversight and Government Reform,
 House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: I am writing concerning H.R. 249, the "Federal Employee Tax Accountability Act of 2013," which your Committee reported on March 20, 2013.

H.R. 249 contains provisions within the Committee on House Administration's jurisdiction. As a result of your having consulted with the Committee, and in order to expedite this bill for floor consideration, the Committee on House Administration will forego action on the bill. This is being done on the basis of our mutual understanding that doing so will in no way diminish or alter the jurisdiction of the Committee on House Administration with respect to the appointment of conferees, or to any future jurisdictional claim over the subject matters contained in the bill or similar legislation.

I would appreciate your response to this letter confirming this understanding, and would request that you include a copy of this

letter and your response in the Committee Report and in the *Congressional Record* during the floor consideration of this bill. Thank you in advance for your cooperation.

Sincerely,

CANDICE S. MILLER,
Chairman.

APPLICATION OF LAW TO THE LEGISLATIVE BRANCH

Section 102(b)(3) of Public Law 104-1 requires a description of the application of this bill to the legislative branch where the bill relates to the terms and conditions of employment or access to public services and accommodations. This bill prohibits individuals with seriously delinquent tax debt from federal civilian employment. Legislative branch employees and their families, to the extent that they are otherwise eligible for the benefits provided by this legislation, have equal access to its benefits.

STATEMENT OF OVERSIGHT FINDINGS AND RECOMMENDATIONS OF THE COMMITTEE

In compliance with clause 3(c)(1) of rule XIII and clause (2)(b)(1) of rule X of the Rules of the House of Representatives, the Committee's oversight findings and recommendations are reflected in the descriptive portions of this report.

STATEMENT OF GENERAL PERFORMANCE GOALS AND OBJECTIVES

In accordance with clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the Committee's performance goals and objectives are reflected in the descriptive portions of this report.

DISCLOSURE OF DIRECTED RULE MAKING

H.R. 249 requires the Office of Personnel Management, in consultation with the Internal Revenue Service, to promulgate regulations to determine whether federal workers or job applicants have seriously delinquent tax debt and are thus ineligible for employment. The regulations must provide certain due process rights, allow individuals 180 days to demonstrate their debt meets one of the exemptions provided in the bill, and allow employment to commence or continue if the individual's service is in the best interests of the United States.

FEDERAL ADVISORY COMMITTEE ACT

The Committee finds that the legislation does not establish or authorize the establishment of an advisory committee within the definition of 5 U.S.C. App., Section 5(b).

UNFUNDED MANDATE STATEMENT

Section 423 of the Congressional Budget and Impoundment Control Act (as amended by Section 101(a)(2) of the Unfunded Mandate Reform Act, P.L. 104-4) requires a statement as to whether the provisions of the reported include unfunded mandates. In compliance with this requirement the Committee has received a letter from the Congressional Budget Office included herein.

EARMARK IDENTIFICATION

H.R. 249 does not include any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9 of Rule XXI.

DUPLICATION OF FEDERAL PROGRAMS

H.R. 249 does not establish or reauthorize a Program of the Federal Government known to be duplicative of another Federal program.

COMMITTEE ESTIMATE

Clause 3(d)(2) of rule XIII of the Rules of the House of Representatives requires an estimate and a comparison by the Committee of the costs that would be incurred in carrying out H.R. 249. However, clause 3(d)(3)(B) of that rule provides that this requirement does not apply when the Committee has included in its report a timely submitted cost estimate of the bill prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act.

BUDGET AUTHORITY AND CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

With respect to the requirements of clause 3(c)(2) of rule XIII of the Rules of the House of Representatives and section 308(a) of the Congressional Budget Act of 1974 and with respect to requirements of clause (3)(c)(3) of rule XIII of the Rules of the House of Representatives and section 402 of the Congressional Budget Act of 1974, the Committee has received the following cost estimate for H.R. 249 from the Director of Congressional Budget Office:

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

APRIL 11, 2013.

Hon. DARRELL ISSA,
Chairman, Committee on Oversight and Government Reform,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 249, the Federal Employee Tax Accountability Act of 2013.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Matthew Pickford.

Sincerely,

DOUGLAS W. ELMENDORF.

Enclosure.

H.R. 249—Federal Employee Tax Accountability Act of 2013

Under H.R. 249, individuals with federal tax debt that is seriously delinquent would be ineligible to be appointed or to continue serving as an employee of the federal government. The legislation defines seriously delinquent tax debt as outstanding tax debt to the federal government for which a public lien has been filed. Tax debt that is being paid in a timely manner or is part of a requested or pending collection-due-process hearing would not be considered se-

riously delinquent. Federal agencies would be required to have job applicants certify that they do not have such debt. The legislation also would allow agencies to review the public records of applicants or current employees; if a lien is discovered, agencies would be authorized to ask affected individuals to request that the Secretary of the Treasury confidentially disclose the status of that lien.

Based on information from the Office of Management and Budget, the Internal Revenue Service, and the Joint Committee on Taxation (JCT), CBO estimates that, subject to the availability of appropriated funds, implementing H.R. 249 would cost \$1 million in 2014 and less than \$500,000 in subsequent years to create certification forms, develop new regulations, and review records of current and prospective employees.

Pay-as-you-go procedures apply to the bill because it would affect direct spending and revenues. Agencies not funded through annual appropriations, such as the Tennessee Valley Authority and Bonneville Power Administration, would face some additional costs (as described above), but CBO estimates that any net increase in direct spending by such agencies would not be significant. JCT estimates that enacting the bill would have a negligible effect on revenues.

H.R. 249 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would not affect the budgets of state, local, or tribal governments.

The CBO staff contact for this estimate is Matthew Pickford. The estimate was approved by Theresa Gullo, Deputy Assistant Director for Budget Analysis.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (new matter is printed in italic and existing law in which no change is proposed is shown in roman):

TITLE 5, UNITED STATES CODE

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PART III—EMPLOYEES

* * * * *

SUBPART F—LABOR-MANAGEMENT AND EMPLOYEE RELATIONS

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CHAPTER 73—SUITABILITY, SECURITY, AND CONDUCT

SUBCHAPTER I—REGULATION OF CONDUCT

Sec.
7301. Presidential regulations.

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SUBCHAPTER VIII—INELIGIBILITY OF PERSONS HAVING SERIOUSLY DELINQUENT TAX DEBTS FOR FEDERAL EMPLOYMENT

- 7381. *Definitions.*
- 7382. *Ineligibility for employment.*
- 7383. *Review of public records.*
- 7384. *Confidentiality.*

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SUBCHAPTER VIII—INELIGIBILITY OF PERSONS HAVING SERIOUSLY DELINQUENT TAX DEBTS FOR FEDERAL EMPLOYMENT

§ 7381. Definitions

For purposes of this subchapter—

- (1) *the term “seriously delinquent tax debt” means an outstanding debt under the Internal Revenue Code of 1986 for which a notice of lien has been filed in public records pursuant to section 6323 of such Code, except that such term does not include—*
 - (A) *a debt that is being paid in a timely manner pursuant to an agreement under section 6159 or section 7122 of such Code;*
 - (B) *a debt with respect to which a collection due process hearing under section 6330 of such Code, or relief under subsection (a), (b), or (f) of section 6015 of such Code, is requested or pending;*
 - (C) *a debt with respect to which a levy has been issued under section 6331 of such Code (or, in the case of an applicant for employment, a debt with respect to which the applicant agrees to be subject to a levy issued under such section); and*
 - (D) *a debt with respect to which relief under section 6343(a)(1)(D) of such Code is granted;*
- (2) *the term “employee” means an employee in or under an agency, including an individual described in sections 2104(b) and 2105(e); and*
- (3) *the term “agency” means—*
 - (A) *an Executive agency;*
 - (B) *the United States Postal Service;*
 - (C) *the Postal Regulatory Commission; and*
 - (D) *an employing authority in the legislative branch.*

§ 7382. Ineligibility for employment

(a) *IN GENERAL.—Subject to subsection (c), any person who has a seriously delinquent tax debt shall be ineligible to be appointed or to continue serving as an employee.*

(b) *DISCLOSURE REQUIREMENT.—The head of each agency shall take appropriate measures to ensure that each person applying for employment with such agency shall be required to submit (as part of the application for employment) certification that such person does not have any seriously delinquent tax debt.*

(c) *REGULATIONS.—The Office of Personnel Management, in consultation with the Internal Revenue Service, shall, for purposes of carrying out this section with respect to the executive branch, pro-*

mulgate any regulations which the Office considers necessary, except that such regulations shall provide for the following:

(1) *All due process rights, afforded by chapter 75 and any other provision of law, shall apply with respect to a determination under this section that an applicant is ineligible to be appointed or that an employee is ineligible to continue serving.*

(2) *Before any such determination is given effect with respect to an individual, the individual shall be afforded 180 days to demonstrate that such individual's debt is one described in subparagraph (A), (B), (C), or (D) of section 7381(a)(1).*

(3) *An employee may continue to serve, in a situation involving financial hardship, if the continued service of such employee is in the best interests of the United States, as determined on a case-by-case basis.*

(d) *REPORTS TO CONGRESS.—The Director of the Office of Personnel Management shall report annually to Congress on the number of exemptions made pursuant to subsection (c)(3).*

§ 7383. Review of public records

(a) *IN GENERAL.—Each agency shall provide for such reviews of public records as the head of such agency considers appropriate to determine if a notice of lien (as described in section 7381(1)) has been filed with respect to an employee of or an applicant for employment with such agency.*

(b) *ADDITIONAL REQUESTS.—If a notice of lien is discovered under subsection (a) with respect to an employee or applicant for employment, the agency may—*

(1) *request that the employee or applicant execute and submit a form authorizing the Secretary of the Treasury to disclose to the head of the agency information limited to describing whether the employee or applicant has a seriously delinquent tax debt; and*

(2) *contact the Secretary of the Treasury to request tax information limited to describing whether the employee or applicant has a seriously delinquent tax debt.*

(c) *AUTHORIZATION FORM.—The Secretary of the Treasury shall make available to all agencies a standard form for the authorization described in subsection (b)(1).*

(d) *NEGATIVE CONSIDERATION.—The head of an agency, in considering an individual's application for employment or in making an employee appraisal or evaluation, shall give negative consideration to a refusal or failure to comply with a request under subsection (b)(1).*

§ 7384. Confidentiality

Neither the head nor any other employee of an agency may—

(1) *use any information furnished under the provisions of this subchapter for any purpose other than the administration of this subchapter;*

(2) *make any publication whereby the information furnished by or with respect to any particular individual under this subchapter can be identified; or*

(3) permit anyone who is not an employee of such agency to examine or otherwise have access to any such information.

* * * * *

MINORITY VIEWS

Committee Democrats oppose H.R. 249, the Federal Employee Tax Accountability Act of 2013, which appears to be designed to advance a political message rather than to solve any real problem. We agree that federal employees, like all citizens, should pay their federal taxes. We also agree that federal workers hold the public trust and should be held to a high standard of conduct. The fact is that federal employees have met and exceeded that standard. As a result, this legislation is unwarranted, unnecessary, and counterproductive.

This legislation is unwarranted because the tax delinquency rate for federal employees is less than half that of the general public. In 2011, the tax delinquency rate for the general public was 8.2%. In the same year, the tax delinquency rate for federal workers was only 3.62%.

The legislation is unnecessary because the Internal Revenue Service (IRS) and other executive agencies already have procedures in place to recover funds from federal employees who are delinquent in paying taxes. For example, through the Federal Payment Levy Program, the IRS can impose a continuous levy on federal salaries and annuities up to 15% until the debt is paid. Agencies also have authority to initiate disciplinary action against employees for delinquent tax debts, which may include removal if necessary.

The legislation is counterproductive because it would make it more difficult to collect unpaid taxes from federal employees by requiring their termination and eliminating the ability to impose levies on their federal salaries.

During debate over this legislation, questions were raised about IRS rules and procedures regarding debt collection, options for resolving delinquencies, payment options, tax delinquencies of IRS employees, and other issues. The Chairman promised to obtain answers to these questions and to ensure that all necessary technical amendments were incorporated in a manager's amendment before the bill is brought to the House floor.

On April 4, 2013, Ranking Member Cummings joined Chairman Issa in sending a letter to the IRS requesting specific information that Committee Members agreed was necessary to fairly and fully evaluate the need for this legislation. We look forward to receiving answers to these important questions and making necessary modifications prior to consideration of this measure by the House.

Without this information, it is unclear whether various scenarios under which a taxpayer disputes a tax debt would be exempted under the bill. For example, it is unclear whether an appeal from a collection due process hearing, litigation proceedings in the U.S. Tax Court, or hearings under the IRS' collection appeals program would trigger an exemption.

During the Committee's consideration of H.R. 249, Representative Speier offered an amendment that would have redefined "seriously delinquent tax debt" as debts that exceeded \$25,000. The reasoning behind the amendment was to raise the threshold debt amount to a significant sum to justify making an existing federal employee or job candidate ineligible for employment. Rep. Speier withdrew her amendment based on assurances from the Chairman that the additional information sought from the IRS would be obtained prior to House consideration of the bill.

ELIJAH E. CUMMINGS,
Ranking Member.

